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2015 JUL 23 AM 10:31

July 21, 2015

VIA FEDEX

JUL 27 2015

Edan Rotenberg, Esq.
Super Law Group, LLC
411 State Street, #2R
Brooklyn, New York 11217OGC
@ 2:20 pm
By: MSBRE: *Riverkeeper, Inc. Notice of Violation and Intent to File Suit under the Clean Water Act §505(a), dated May 26, 2015 (the "Notice")*

Dear Mr. Rotenberg:

We represent the persons and entities named in your above-referenced Notice, sent on behalf of Riverkeeper, Inc. ("Riverkeeper"), as a predicate to a Clean Water Act citizen suit. Your Notice named the following persons and entities: U-Haul Co. of New York and Vermont, Inc. ("U-Haul New York"), Jeffrey S. Sonberg, Mark Zoller, U-Haul Business Consultants, Inc., Edward J. Shoen, U-Haul International, Inc., and AMERCO (which you collectively define as, "U-Haul").

We are in receipt of Riverkeeper's Notice, alleging violations of the Clean Water Act (the "CWA"). Specifically, the Notice seeks redress for the purported unpermitted discharge of stormwater from the facility at 139 and 127 Broadway, Albany, NY (the "New York Facility") to the waters of the United States. Riverkeeper's Notice alleges that U-Haul has not applied for coverage under, nor complied with the conditions of, an individual National Pollutant Discharge Elimination System ("NPDES") permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity ("General Permit") issued by the New York State Department of Environmental Conservation ("DEC"), in alleged violation of CWA Section 402(p) and 40 C.F.R. §§122.26(c)(1) and (e)(1).

On October 1, 2012, the DEC promulgated "SPDES Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity," Permit No. GP-0-12-001 ("DEC MSGP"). As specified in the DEC MSGP, the obligation to obtain coverage under the DEC MSGP is premised upon the discharger's inclusion within certain categories of industrial activities, based on the system of Standard Industrial Classification (SIC) codes. These classifications are found in Part VIII of the DEC MSGP.¹

¹ DEC MSGP Part I.(C)(1), p. 12.

In determining its scope of applicability, the DEC MSGP cross-references 40 C.F.R. Part 122.26(b)(14)(i) through (ix) and (xi). Part 122.26(b) lists certain categories of industrial activities. Only those dischargers of stormwater whose activities fall within these listed categories are subject to the DEC MSGP. In addition to this cross-reference, Part VIII of the DEC MSGP expressly lists the various categories of industrial activity that are subject to the permit's requirements. Industries whose activities are not listed are not required to obtain coverage, as the MSGP requirements do not apply to their operations.

As a preliminary matter, under the CWA, there is no basis on the facts alleged for individual liability of the named officers, directors and representatives of any of the corporate entities listed in the Notice. Moreover, neither AMERCO nor U-Haul International, Inc., operates in the State of New York or at the New York Facility. And, although U-Haul Business Consultants, Inc., is qualified to do business in the State of New York, it is not engaged in any business operational activity or revenue generating activity. Therefore, the allegations in Riverkeeper's Notice have no relevance whatsoever to AMERCO, U-Haul International, Inc., or U-Haul Business Consultants, Inc., or to any of the individuals named therein. Accordingly, this response will solely address Riverkeeper's allegations as they pertain to U-Haul New York.

In the Notice, Riverkeeper erroneously contends that U-Haul is subject to the DEC MSGP. But as we discussed previously, on June 30, 2015, staff from the DEC, as the regulatory agency responsible for the implementation of stormwater management in New York, inspected the New York Facility and determined that the nature of the company's activities do not require MSGP coverage.²

Moreover, Riverkeeper's Notice is premised upon the incorrect assertion that U-Haul's SIC code is 4214, Local Trucking With Storage. U-Haul New York's SIC code is not 4214, however. Rather, U-Haul New York's SIC code is 7513, Truck Rental and Leasing, No Drivers.³ Because it is a truck rental company, U-Haul New York does not provide drivers with its trucks. Rather, it rents trucks and trailers to do-it-yourself movers. U-Haul New York operates differently than SIC code 4214 companies because U-Haul New York's customers are responsible for renting and driving the trucks, as well as packing, loading and unloading their own goods. Further, unlike SIC code 4214 companies, U-Haul New York does not limit its rentals to "local" use. Rather, the company rents trucks and trailers for both in-town and long distance moves.

In contrast, SIC code 4214 is a category of activity that encompasses businesses that primarily offer both local trucking services *with drivers*, and warehousing storage.⁴ SIC code 4214 applies to businesses primarily engaged in furnishing both trucking and storage services, including household goods, within a single municipality, contiguous municipalities, or a municipality and its suburban areas. SIC code 4214 companies thus differ fundamentally from U-Haul New York. For the foregoing reasons, neither U-Haul New York nor the other persons

² Ex. A.

³ See Ex. B, Hoovers Company Profile: U-Haul Co. of New York and Vermont, Inc.

⁴ See Ex. C, United States Department of Labor, Occupational Safety & Health Administration, Description of SIC Code 4214.

or entities named in Riverkeeper's Notice are subject to the state or federal MSGPs, and the claims in Riverkeeper's Notice lack merit.

Attempting to overcome the factual inconsistency of its position, Riverkeeper claims that because the New York Facility offers rental of storage space separate from its truck rental services, it *should be* categorized as SIC code 4214. This position is inconsistent with the law, the express terms of the state and federal MSGPs, and even the express determination of the DEC, as the regulatory agency responsible for the implementation of stormwater management in New York. To reiterate, on June 30, 2015, DEC staff inspected the New York Facility and determined that the nature of the company's activities do not require MSGP coverage.

Based on the foregoing, U-Haul, as collectively defined in the Notice, requests that Riverkeeper withdraw its Notice with prejudice, and that it provide written confirmation of this withdrawal.

Please be advised that any litigation commenced by Riverkeeper based on the allegations contained in the Notice will be defended vigorously by U-Haul (as collectively defined in the Notice), together with a request by our clients for recovery of the costs of litigation, including reasonable attorneys' fees. Please be further advised that nothing in this letter shall constitute a waiver of any of our clients' rights, remedies and defenses. U-Haul (as collectively defined in the Notice) specifically preserve all of their respective rights, remedies, defenses and counterclaims.

Sincerely,

HARRIS BEACH PLLC

By: 
Gene Kelly
Senior Counsel

Edan Rotenberg, Esq.
July 21, 2015
Page 4

HARRIS BEACH ^{PLC}
ATTORNEYS AT LAW

cc: Darlene Wauro, Esq.
Asst. General Counsel
U-Haul International, Inc.
2727 North Central Avenue
Phoenix, AZ 85004

Gina McCarthy, Administrator ✓
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Judith Enck, Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

Joseph Martens, Commissioner
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Keith Goertz, Regional Director
NYS Department of Environmental Conservation
Region 4
1130 North Westcott Road
Schenectady, NY 12306-2014



U-HAUL CO OF NEW YORK AND VERMONT, INC. Profile

139 Broadway
Albany, NY 12202 United States
Phone : +1-518-449-2034
Fax : +1-518-449-1643
<http://www.uhaul.com>

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Company Overview

139 Broadway
Albany, NY 12202 United States
Phone : +1-518-449-2034
Fax : +1-518-449-1643
<http://www.uhaul.com>

Truck rental and leasing, no drivers, nsk

Key Information

DUNS Number	106791395
Location Type	Headquarters
Subsidiary Status	Yes
Manufacturer	No
Ultimate Parent	AMERCO
Ultimate Parent DUNS	054408745
Immediate Parent	U-HAUL INTERNATIONAL, INC.
Immediate Parent DUNS	042370775
Plant/Facility Size (sq. ft.)	200,000.00
Owns/Rents	Owns
Total Employees	100
1-Year Employee Growth	0.00%
Employees At This Location	14
Year of Founding or Change in Control	1971
Primary Industry	1027:Truck Rental & Leasing
Primary SIC Code	75130000:Truck rental and leasing, no drivers
Primary NAICS Code	532120:Truck, Utility Trailer, and RV (Recreational
Tradestyle	U-Haul
Latitude/Longitude	42.641696 / -73.75106

Key Financials

Fiscal Year-End	December
Sales (\$ M)	\$10.20M
Prescreen Score	Low Risk

Key People

Name	Title
Ms Roberta Koretnicki	V Pres

People

Employees

Title	Name	Age	Salary	Bonus
V Pres	Ms Roberta Koretnicki		--	--

Biographies

Roberta Koretnicki

Current Company Titles

Unknown - Present : V Pres

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of Environmental Quality, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2045 | F: (518) 357-2398
www.dec.ny.gov

July 2, 2015

Mark Zoller, Principal
U-Haul Co. of New York and Vermont, Inc.
139 Broadway
Albany, NY 12202

Re: U-Haul, 139 Broadway, Albany, NY 12202

Dear Mr. Zoller:

On June 30, 2015, Holly Shear, Environmental Program Specialist, Amy Lebel, DEC student intern, and I visited your site. The reason for the visit was prompted by the May 26, 2015 letter from the Super Law Group, LLC regarding their observations that your facility needed to have permit coverage under the New York State Department of Environmental Conservation SPDES Multi-Sector General Permit for Stormwater Discharges from Industrial Activity (MSGP).

Upon arrival, we went into the customer service counter, identified ourselves and asked if we could meet with a manager or supervisor. The staff person at the counter was aware of the letter that had been sent by the Super Law Group. We explained the purpose of our visit and what we needed to observe. He said he could take us through the facility and he pointed out the catch basins, and also showed us the sanitary connection for the vehicle wash bay.

Based on our observations at the time of our visit, we told your staff person that we did not observe any activities that would necessitate your facility needing to obtain MSGP coverage. Please do not hesitate to contact me at 518-357-2044 or mary.barrie@dec.ny.gov if you have any questions relative to our visit or the MSGP.

Sincerely,



Mary O. Barrie
Environmental Program Specialist
Region 4

Ec: A. Dzierwa
H. Shear



Department of
Environmental
Conservation



UNITED STATES
DEPARTMENT OF LABOR

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Description for 4214: Local Trucking With Storage

Division E: Transportation, Communications, Electric, Gas, And Sanitary Services | Major Group 42: Motor Freight Transportation And Warehousing

Industry Group 421: Trucking And Courier Services, Except Air

4214 Local Trucking With Storage

Establishments primarily engaged in furnishing both trucking and storage services, including household goods, within a single municipality, contiguous municipalities, or a municipality and its suburban areas. Establishments primarily engaged in furnishing warehousing and storage of household goods when not combined with trucking are classified in Industry 4226. Establishments primarily engaged in furnishing local courier services for letters, parcels, and packages weighing less than 100 pounds are classified in Industry 4215.

- Furniture moving, local: combined with storage
- Household goods moving, local: combined with storage
- Trucking, local: combined with storage

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U.S. Department of Labor | Occupational Safety & Health Administration | 200 Constitution Ave., NW, Washington, DC 20210

Telephone: 800-321-OSHA (6742) | TTY

www.OSHA.gov

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